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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

PURELY POMEGRANATE, INC., a California Corporation and VALLEY FORGE INSURANCE CO., a Pennsylvania Corporation,

Plaintiffs,

v.

FALLON TRADING COMPANY, a Pennsylvania Corporation; GOKNUR GIDA MADDELERI ITH, IHR. TIC. VE SAN. A.S dba GOKNUR FOODSTUFFS IMPORT EXPORT TRADING and PRODUCTION CO., a Turkish company doing business in California; UNITED JUICE CORP., a New Jersey corporation: and DOES 1-50,

Defendants.

Case No. 8:15-cv-00840

COMPLAINT FOR:

1) EQUITABLE INDEMNITY;

2) NEGLIGENCE;

3) NEGLIGENT INTERFERENCE WITH ECONOMIC ADVANTAGE;

4) BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;

5) BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND

6) DECLARATORY RELIEF

Purely Pomegranate, Inc. (“PPI”) and Valley Forge Insurance Company (“Valley Forge”) hereby file this Complaint against Fallon Trading Company (“Fallon”), Goknur Gida Maddeleri Ith. Ihr. Tic. Ve San. A.S dba Goknur Foodstuffs Import Export Trading and Production Co. (“Goknur”), United Juice Corp. (“United Juice”), and Does 1-50 (collectively “Defendants”) as follows:

Nature of Action

1. This is an action for damages due to claims against PPI arising from allegedly contaminated pomegranate arils supplied by Defendants.

The Parties

2. PPI is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California with its principle place of business in the State of California. PPI is authorized to do business in the State of California.

3. Valley Forge is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of Pennsylvania with its principle place of business in the State of Illinois. Valley Forge is authorized to do business in the State of California. Valley Forge issued policies of liability insurance under which PPI was insured during the relevant time period.

4. Third party Townsend Farms, Inc. is an Oregon corporation that was also insured as an "additional insured" with respect to certain bodily injuries as defined under the Valley Forge policies insuring PPI during the relevant time period.

5. PPI and Valley Forge are informed and believe and on that basis allege that Goknur is a business entity organized and existing under the laws of Turkey, with its principle place of business in Turkey, that conducts business in the United States generally and California specifically, including the shipment of the pomegranate arils at issue to locations within the United States, including California.

6. PPI and Valley Forge are informed and believe and on that basis allege that United Juice is a corporation organized and existing under the laws of the State of New Jersey, with its principle place of business in the State of New Jersey, and is authorized to do business in the State of California. United Juice has represented to courts that it is a subsidiary of Goknur. An example of such a representation, a copy

of United Juice's corporate disclosure statement filed in *Straka v. Townsend Farms, Inc.*, et al., No. 3:13-cv-01759-HZ (D. Or.), is attached hereto as Exhibit A.

7. PPI and Valley Forge are informed and believe that Goknur and United Juice are the alter egos of each other such that observance of the fiction of separate existence would sanction a fraud and promote injustice. For example, PPI and Valley Forge are informed and believe Goknur formed United Juice for the purposes of entering the U.S. market, Goknur secures insurance for United Juice, Goknur controls the assets of United Juice, Goknur uses United Juice as a conduit for importation of products, including the pomegranate arils at issue in this action, into the United States, and that Goknur and United Juice share employees.

8. PPI and Valley Forge are informed and believe that, at all relevant times, Goknur and United Juice were the agents of each other with respect to the relevant transactions involving the pomegranate arils at issue as discussed below.

9. Plaintiffs are informed and believe, and on that basis allege, that Does 1-50 are sued herein under fictitious names for the reason that their true names are unknown to Plaintiffs. When such names are ascertained, Plaintiffs will seek leave of this Court to amend this Complaint accordingly.

Jurisdiction

10. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 9.

11. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332(a) and (c), the parties being citizens of different states and the amount in controversy being in excess of $75,000.00, excluding interest and costs.

12. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391.

13. This Court has jurisdiction and venue over Defendants because, for example, numerous Underlying Claims are venued in this Court, all of which were noticed and tendered to Defendants, and each of them, but all have refused to defend

and indemnify PPI. Additionally, at all relevant times Defendants, each of them, have done and do business in the State of California, they shipped certain shipments of the pomegranate arils at issue to California, and they have traveled to California, including for the purposes of meeting with PPI. Goknur has been found to be subject to the jurisdiction of California courts in the matter of *Brackenridge v. Townsend Farms, Inc.*, et al., No. BC-510633, Superior Court, County of Los Angeles, which allegedly arose from the same facts as are at issue here. A copy of the notice of that court's ruling is attached hereto as Exhibit B. In addition, Goknur has conceded jurisdiction in California by answering a cross-complaint filed by Fallon Trading Company in the *Favero v. Townsend Farms, Inc.*, et al., No. 37-2013-00051417-CU-PL-CTL, Superior Court, County of San Diego, which involves pomegranate arils from the same lot as are at issue in this matter. A copy of Goknur's Answer in *Favero* is attached hereto as Exhibit C.

Background

14. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 13.

15. Defendants manufactured, exported, distributed, sold or otherwise provided pomegranate arils that were sold by PPI to Townsend Farms, Inc. ("Townsend Farms") and Scenic Fruit Company ("Scenic"). Defendants sold the pomegranate arils, identified as Lot Code 12-15-13-2-1-0, to PPI between September 24, 2013 and December 17, 2013 (hereinafter referred to as the "Pomegranate Arils"). At all relevant times Goknur has represented that its products, including the Pomegranate Arils, are good for human consumption and are processed and packaged in its plants under strict HACCP guidelines and FDA regulations, laws, and applicable process standards. Defendants, and each of them, represented that the Pomegranate Arils had been produced, manufactured or performed in compliance with the requirements of, and met the standards of, all applicable Federal, State, and local laws, regulations and ordinances.

16. PPI reasonably relied on Defendants', and each of their, representations and warranties regarding the Pomegranate Arils in making the decision to purchase the Pomegranate Arils and subsequently in distributing the arils to Townsend Farms and Scenic.

17. Plaintiffs are informed and believe and on that basis allege that Townsend Farms and Scenic utilized portions of the Pomegranate Arils in their respective products. Townsend Farms distributed a product called "Townsend Farms Organic Antioxidant Blend" (the "TFI Product"), a frozen berry and pomegranate aril mix that contained the Pomegranate Arils. Townsend Farms distributed and sold the TFI Product through Costco at retail stores throughout the western United States, including in the State of California. Scenic Fruit Company distributed a product called "Woodstock Organic Pomegranate Kernels" (the "Scenic Product"), a product containing the Pomegranate Arils. Plaintiffs are informed and believe and on that basis allege that the Scenic Product was shipped to distribution centers in California, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, New Hampshire, Pennsylvania, Rhode Island, Texas, and Washington State. From those locations the Scenic Product may have been further distributed to retail stores in other states.

18. Numerous individuals allegedly contracted HAV after exposure to the TFI Product, the Scenic Product or to individuals who had purportedly contracted HAV from exposure to either the TFI Product or the Scenic Product. From an investigation of certain of these individual's circumstances, the U.S. Food and Drug Administration ("FDA") and Centers for Disease Control and Prevention ("CDC") contend that the most likely vehicle of transmission of the Hepatitis A virus in the TFI Product were the Pomegranate Arils supplied by Defendants.

19. PPI recalled the Pomegranate Arils and Townsend Farms and Scenic both recalled their products containing the Pomegranate Arils.

20. On or about July 2013, PPI began receiving claims and lawsuits alleging injuries and damages related to the contention that the Pomegranate Arils were tainted with HAV. These underlying claims include: (1) numerous lawsuits and claims by individuals who allege damages or injury due to exposure to the TFI Product or Scenic Product and the Pomegranate Arils contained in those products (or exposure to others who allegedly contracted HAV from exposure to the Pomegranate Arils) supplied by Defendants; and (2) claims against PPI by Townsend Farms, Costco and Scenic Fruit, who were allegedly involved in the manufacture, supply, storage, distribution or sale of products that incorporated the Pomegranate Arils supplied by Defendants, collectively the "Underlying Claims". A listing of all known Underlying Claims that have been asserted in lawsuits is attached as Exhibit D. In addition, with respect to eighty-four (84) of the Underlying Claims, claims have been asserted but no lawsuits have been filed of which PPI is aware, at the time of the filing of this Complaint.

21. PPI has denied and continues to deny liability for the Underlying Claims. Plaintiffs are informed and believe and on that basis allege that Townsend Farms has denied and continues to deny liability for the Underlying Claims. Valley Forge is participating, under reservation of rights, in the defense of PPI and Townsend Farms against certain of the lawsuits identified in Exhibit D.

22. Pursuant to California Commercial Code Section 2607 and California Code of Civil Procedure Section 1021.6, (and similar laws of other states), Plaintiffs repeatedly provided Defendants with notices of the Underlying Claims and requested that Defendants defend and indemnify PPI with respect to the Underlying Claims. Defendants refused and continue to refuse to defend and indemnify PPI. Plaintiffs also requested that Defendants participate in settlement of the Underlying Claims. Defendants refused and continue to refuse to participate in the settlement of the Underlying Claims.

23. To protect their interests, Plaintiffs have settled, and continue to settle, certain of the Underlying Claims. Beginning in 2014, Valley Forge has paid amounts toward the settlement of certain of the Underlying Claims on behalf of its insureds, PPI and/or Townsend Farms, and as a result is subrogated to the rights of PPI and Townsend Farms, respectively, against Defendants to the extent of said payments. Valley Forge brings this suit against Defendants, and each of them, in its capacity as subrogee.

24. In participating in the defense of the Underlying Claims and in making the payments, which were reasonable, Valley Forge did not act as a volunteer.

25. Valley Forge has suffered and will continue to suffer damages in a determinable amount in excess of $75,000.00, caused by the act or omission upon which the liability of Defendants depends.

26. Justice requires that the loss should be entirely shifted from Valley Forge to the Defendants, whose equitable position is inferior to that of Valley Forge.

27. PPI has also suffered damages and will continue to suffer damages related to the Underlying Claims and the alleged contamination of the Pomegranate Arils, including but not limited to cost of recall, lost profits, loss of business, loss of reputation, and legal costs. PPI's damages currently exceed $75,000.00.

First Cause of Action

(Equitable Indemnity)

28. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 27.

29. PPI has been subject to the Underlying Claims due to the allegedly defective Pomegranate Arils supplied by Defendants.

30. PPI has provided notice to Defendants of the Underlying Claims and the opportunity to defend and indemnify PPI with respect to the Underlying Claims.

31. Plaintiffs are informed and believe and on that basis allege that if allegations of the Underlying Claims are found to be true, and Plaintiffs are held

liable for the Underlying Claims, it will be because of and as a proximate result of primary or active negligence or other wrongful conduct of Defendants herein. Therefore, any liability of Plaintiffs will be imputed on the basis of vicarious, constructive, derivative, or secondary liability, and not as a result of any active negligence or other acts on the part of Plaintiffs. If Plaintiffs are found liable for any damages alleged in the Underlying Claims, then said liability will be the result of the acts and omissions, whether negligent or otherwise, of each of the Defendants, and that as a result, Plaintiffs will be entitled to equitable indemnification to the full extent permitted by law.

32. Plaintiffs have suffered and will continue to suffer losses and other general, consequential, specific, and substantial damages in an amount to be determined according to proof at time of trial.

Second Cause of Action

(Negligence)

33. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 32.

34. Defendants, and each of them, had a duty to exercise reasonable care in the manufacture, export, import, distribution, supply or sale of the Pomegranate Arils.

35. Defendants also owed a duty to exercise reasonable care to ensure that the Pomegranate Arils were merchantable and free from defects and fit for the use for which they were intended, and to make sure that the Pomegranate Arils met Defendants' own specifications and performance standards, the standards of care in the industry, and all applicable Federal, State, and local laws, regulations and ordinances.

36. If the allegations of the Underlying Claims are true, Defendants will have breached all of these duties to Plaintiffs. As a direct and proximate result of such a breach, Plaintiffs have suffered and will continue to suffer losses and other

general, consequential, specific, and substantial damages in an amount to be determined according to proof at time of trial.

Third Cause of Action

(By PPI Against Defendants - Negligent Interference With Economic Advantage)

37. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 36.

38. At all relevant times Defendants, and each of them, were aware from communications by PPI and other sources of the nature and economic prospects of PPI.

39. Prior to the alleged outbreak of HAV from the Pomegranate Arils, PPI had economic relationships with third parties that contained a reasonably probable future economic benefit or advantage to PPI.

40. Defendants, and each of them, had a duty to exercise reasonable care in the manufacture, export, import, distribution, supply or sale of the Pomegranate Arils.

41. Defendants also owed a duty to exercise reasonable care to ensure that the Pomegranate Arils were merchantable and free from defects and fit for the use for which they were intended, and to make sure that the Pomegranate Arils met Defendants' own specifications and performance standards, the standards of care in the industry, and all applicable Federal, State, and local laws, regulations and ordinances.

42. If the allegations of the Underlying Claims are true, Defendants will have breached all of these duties to Plaintiffs. As a direct and proximate result of such a breach, Plaintiffs have suffered and will continue to suffer losses and other general, consequential, specific, and substantial damages in an amount to be determined according to proof at time of trial.

Fourth Cause of Action

(Breach of Implied Warranty of Merchantability)

43. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 42.

44. Defendants, and each of them, individually and collectively, made implied warranties of merchantability concerning the Pomegranate Arils, which were relied upon by PPI at the time of purchase and acquisition and continuing up to and including the time of the alleged incidents giving rise to the Underlying Claims. Should the allegations of the Underlying Claims prove true, Defendants will have breached such warranties.

45. As a result of Defendants' breaches, PPI has suffered and will continue to suffer losses and other general, consequential, specific, and substantial damages in an amount to be determined according to proof at time of trial.

Fifth Cause of Action

(Breach of Implied Warranty of Fitness for a Particular Purpose)

46. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 45.

47. At the time of the PPI's purchase of the Pomegranate Arils, Defendants, and each of them, knew or had reason to know of PPI's particular needs and intended use of the Pomegranate Arils; in particular, that PPI intended that product for human consumption and for sale to others to include in products for human consumption.

48. At the time of sale, Defendants, and each of them, knew or had reason to know PPI was relying on their skill and judgment in providing suitable goods, *i.e.*, that were safe for human consumption.

49. PPI justifiably relied on Defendants' skill and judgment to provide the Pomegranate Arils were suitable for its needs.

50. In the event the allegations of the Underlying Claims are established, the Pomegranate Arils provided by Defendants will not have been suitable for PPI's particular needs and would have not been safe for human consumption, as warranted.

51. Defendants will have breached the implied warranty of fitness for a particular purpose.

52. As a result of such breaches, PPI has suffered and will continue to suffer substantial economic losses and other general, consequential, specific, and substantial damages in an amount to be determined according to proof at time of trial.

Sixth Cause of Action

(Declaratory Relief)

53. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 52.

54. An actual and substantial controversy has arisen and now exists between Plaintiffs and Defendants, and each of them, concerning their respective rights and duties with respect to liability for the Underlying Claims as alleged herein, and to the extent that any damages, judgments, or other relief is awarded against Plaintiffs, they are entitled to a finding of indemnification from Defendants, and each of them, as well as recovery of its attorneys' and consultant fees and costs, which Plaintiffs are informed and believe and on that basis allege that Defendants deny any such indemnification obligation.

55. Plaintiffs seek a judicial determination of their rights and duties of the parties, and a declaration that Defendants, and each of them, are obligated to defend, indemnify, and hold Plaintiffs harmless for the damages and losses incurred as a

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result of the Underlying Claims, as well as reimburse Plaintiffs for all expense they may incur and have incurred in defense of the Underlying Claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. That PPI and Valley Forge be awarded damages sustained as a consequence of Defendants' conduct;

2. For pre-judgment and post-judgment interest;

3. For the cost of suit incurred herein;

4. For attorney fees, including but not limited to fees pursuant to Cal. Code Civ. Proc. Sec. 1021.6;

5. For a declaration that Defendants, and each of them, owe Plaintiffs a duty to defend, indemnify and hold them harmless against the Underlying Claims;

6. For costs of suit; and

7. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: May 28, 2015

CARROLL, BURDICK & McDONOUGH LLP

By /s/ Robert Binion

G. David Godwin
Robert Binion
Attorneys for PURELY POMEGRANATE, INC. and VALLEY FORGE INSURANCE COMPANY